



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:
H.B. NO. 279, RELATING TO THE COUNTIES.

BEFORE THE:
HOUSE COMMITTEE ON TRANSPORTATION

DATE: Tuesday, January 31, 2023 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 312

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Janine R. Udoi, Deputy Attorney General

Chair Todd and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments.

This bill amends section 46-16.8(f), Hawaii Revised Statutes (HRS), to allow counties that have adopted a county surcharge on state tax ordinances and have a population equal or less than five hundred thousand people to "use the surcharges received from the State for . . . [the o]perating or capital costs of public transportation within the county for public transportation systems including . . . private roadways that are open to and used by the public" (page 1, lines 7-14). Similarly, the bill also amends section 243-6(e)(2), HRS, to allow county fuel taxes to be expended "[f]or acquisition, designing, construction, reconstruction, improvement, repair, and maintenance" of county streets, "including private roadways that are open to and used by the public" (page 4, lines 17-21).

This bill could be strengthened by providing a more robust declaration of its public purpose in section 1. Article VII, section 4, of the Hawaii Constitution, titled "Appropriations for Private Purposes Prohibited," provides in part:

No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, *directly or indirectly, except for a public purpose.* [Emphasis added.]

Determining what constitutes a public purpose is generally a question for the Legislature to decide. *State ex rel. Amemiya v. Anderson*, 56 Haw. 566, 574, 545 P.2d 1175, 1180-81 (1976). The question is whether the ultimate objective of the act serves a public purpose and benefits accruing to private interests are incidental. *Id.* at 576, 545 P.2d at 1182. Because this bill proposes to improve privately owned roads that are open to and used by the public, the risk of challenge may be minimized by explaining in more detail the public-purpose rationale underpinning the bill.

Thank you for the opportunity to provide comments on this bill.

TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, FUEL, Allow county revenues to repair private roadways used by the public

BILL NUMBER: HB 279

INTRODUCED BY: KILA, CHUN, ICHIYAMA, KAPELA, LAMOSAO, TAKENOUCI

EXECUTIVE SUMMARY: Allows certain counties to utilize tax revenues collected by the counties for the repair and maintenance of private roads that are open to and used by the public.

SYNOPSIS: Amends section 46-16.8, HRS, to allow each county with a population less than or equal to 500,000 to use county surcharge revenue to be used for private roadways that are open to and used by the public.

Amends section 243-6, HRS, to allow fuel taxes deposited in county highway funds to be used for private roadways that are open to and used by the public.

Makes additional technical and conforming amendments.

EFFECTIVE DATE: July 1, 2023.

STAFF COMMENTS: Section 243-6, HRS, provides generally that fuel taxes, both at the state and county levels, are deposited into the highway fund. The highway fund generally funds construction and improvements to our highways and byways.

The Highway Fund is needed under federal law to demonstrate the state's expenditures for transportation infrastructure, which is a requirement to get federal aid for highway construction.

The county surcharge on the General Excise Tax is used in the City & County of Honolulu to support its rail mass transit project. The law creating the county surcharge for the other counties allowed those counties to use the surcharge funds for transportation infrastructure.

It appears that the proposed additional use of highway funds and transportation-related county surcharge revenue is within the spirit of the law. The fuel tax disposition statute, HRS section 243-6, already contains language stating that no expenditures shall be made if they would jeopardize federal aid for highway construction.

Digested: 1/28/2023

LATE

HB-279

Submitted on: 1/30/2023 9:14:04 PM

Testimony for TRN on 1/31/2023 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
David Carona	Individual	Comments	Written Testimony Only

Comments:

Apologize for not participating in person. This committee meeting date/time conflicts with my schedule. Please see the below initial comments for committee consideration.

I am concerned with this bill draft in its current form. Although I feel the cities/counties should become more engaged with private roads, each city needs to follow their existing laws and not pick and choose which roads they maintain. Yes, the city currently states they maintain certain private roads over others. Cities/Counties must hold private road owners accountable if/when a private road is used for public purposes, etc. If the owner doesn't want to be accountable, then the owner should surrender the road to the city/county.

To have the State step in and adjust law not only puts the cities/counties of the state on notice, but it also now impacts private road owners.

I'm further concerned about adding additional requirements to the state fuel tax dollars to support private road maintenance. By adding private roads what deficiencies will this create? The state is already at odds with tax revenue decreases due to electrical vehicles and their lack of contributing to this tax.

I do believe that cities/counties need to re-visit how they maintain roads (city owned/privately owned). Stop putting developments in locations that must traverse private roads to get to new developments. Stop picking and choosing which streets get maintained and which ones do not.

This House Bill has the right intentions and I would support this bill when more detailed information can be provided. For the Island of Oahu (not sure of the other islands), the amount of private roads are enormous. Without an increase in fuel tax to offset the maintenance requirements by adding private roads, I feel it cannot happen. I "DO NOT" support tax increases.

V/r Mr. Carona